

REMARKS

1. Claim Rejections – 35 U.S.C. §§ 102

The Examiner has rejected claims 1, 4, 5 and 8-11 under 35 U.S.C. §§ 102 (e) over *Abreu* (U.S. 2004/0058313). This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

The Examiner will note that the claims have been amended to delete the word “ocular” in order to address the Examiner’s concern about support for the claims. Claim 1, as amended, is directed to “an implant” for treating a “medical condition of an eye”. This language is fully supported by the Specification of grandparent application serial No. 10/096,501 filed on March 11, 2002, now U.S. Patent 6,585,993. For example, the Abstract of the ‘993 patent describes a “biocompatible implant” and item (5) in column 8 of the patent discusses treatment of “strabismus”, which one skilled in the art would recognize is a “condition of an eye”. Applicants submit that the language in amended independent claims 1 and 6 directed to a “implant for treating a medical condition of the eye” is therefore fully supported under 35 U.S.C. §§ 112 by Applicant’s grandparent Specification serial No. 10/096,501. Since this application was filed on March 11, 2002, prior to the provisional application filing date of *Abreu*, the *Abreu* patent publication has been antedated and is no longer citable prior art.

Accordingly, reconsideration and withdrawal of the rejection are requested.

2. Claim Rejections – 35 U.S.C. §§ 103

Claims 2, 3, 6, 7, 12 and 13 have been rejected under 35 U.S.C. §§ 103 (a) over *Abreu* ‘313. This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

For the reasons discussed above, *Abreu* ‘313 has been antedated and is not citable as prior art against claims 2, 3, 6, and 7.

With respect to claims 12 and 13, these claims do not simply recite a “release rate” as suggested by the Examiner. Rather, the claims recite a differentiation in the concentration of botulinum

toxin in the aqueous humor, as compared to the vitreous humor after implantation. As noted at the end of examples 9-12 of the application, the present invention provides an implant from which much lower levels (approximately 10-fold lower) of botulinum toxin are found in the aqueous humor, and only trace amounts will be found in the plasma. These aspects of the present invention are nowhere taught or suggested in the *Abreu* publication. In addition, Applicants submit that this type of feature is not a mere "obvious to design" feature as suggested by the Examiner.

Accordingly, reconsideration and withdrawal of the rejections are requested.

Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicants respectfully petition for a three (3) month extension of time for filing a reply in connection with the present application, and the required fee of \$1050 is attached hereto.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Leonard R. Svensson Reg. No. 30,330 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

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Respectfully submitted,

By 

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